

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

FAIRPLAY ELECTRIC CARS, LLC)	
)	
Plaintiff,)	
v)	
)	C.A. No. 06-60 (JJF)
TEXTRON INNOVATIONS, INC.)	
)	
Defendant.)	
)	
)	

AMENDED COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff, Fairplay Electric Cars, LLC ("Fairplay"), by and through its attorneys, states as follows for its Complaint against Defendant, Textron Innovations, Inc. ("Textron"):

JURISDICTION AND VENUE

1. This is an action for declaratory judgment, arising under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202 and the Patent Laws of the United States of America, 35 U.S.C. §§ 101 *et seq.*, seeking a declaratory judgment of non-infringement, of United States Design Patent Nos. 345,717 ("the '717 Patent"), 369,762 ("the '762 Patent") and 373,099 ("the '099 Patent"), each of which are entitled "Golf Car."

2. This Court has subject matter jurisdiction over all causes of action set forth hereunder pursuant to 28 U.S.C. §§ 1331 (Federal Question Jurisdiction), 1338(a) (Jurisdiction over Patents), 2201 and 2202 (both Sections relating to Jurisdiction under the Declaratory Judgment Act).

3. This Court also has personal jurisdiction over Textron because Textron is incorporated in and conducts business within the State of Delaware and within this District.

4. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(a) and (b) in that, at all times material to this Complaint, Textron has committed one or more of the acts complained of herein within the United States of America, this State and this District.

PARTIES

5. Fairplay is a Limited Liability Corporation organized and existing under the laws of the State of Colorado. Fairplay maintains a principal place of business at 743 Horizon Court, Suite 333, Grand Junction, Colorado 81506. Fairplay is in the business of, *inter alia*, marketing and selling electric cars, including golf cars.

6. Textron is a Corporation organized and existing under the laws of the State of Delaware, and maintains a principal place of business at 40 Westminster Street, Providence, Rhode Island 02903.

FACTUAL BACKGROUND

7. An actual justiciable case or controversy exists between the parties with respect to Fairplay's 2007 ZX Series Cars (the "2007 ZX Cars"), and the infringement of three patents assigned to Textron.

8. On April 5, 1994, the '717 Patent, entitled "Golf Car," issued to William R. Molzon and James M. Criscuolo. A true and accurate copy of the '717 Patent is attached to this Complaint as Exhibit A.

9. On May 14, 1996, the '762 Patent, entitled "Golf Car," issued to William R. Molzon and James M. Criscuolo. A true and accurate copy of the '762 Patent is attached to this Complaint as Exhibit B.

10. On August 27, 1996, the '099 Patent, entitled "Golf Car," issued to William R. Molzon and James M. Criscuolo. A true and accurate copy of the '099 Patent is attached to this Complaint as Exhibit C.

11. Each of the '717, '762 and '099 Patents lists as the Assignee Textron.

12. On January 17, 2006, Textron, along with Textron Inc., filed a Complaint For Injunctive Relief And Jury Demand ("Complaint") against Fairplay in the United States District Court for the Southern District of Georgia, Augusta Division. This Action, referred to hereinafter as the "Georgia Action," was assigned Case Number CV106-009. The Georgia Action alleged, *inter alia*, the infringement of the '717, '762 and '099 Patents by Fairplay of all of the golf cars then being marketed and sold by Fairplay, namely Fairplay's Fleet Model Golf Car Nos. PEC-2F4840 and PEC-4F4840, and Fairplay's Legacy Model Cars.

13. Along with the Complaint, Textron requested, and was granted, a Preliminary Injunction hearing in which Fairplay was ordered to show cause by January 23, 2006, as to why a Preliminary Injunction was not to be ordered against Fairplay concerning infringement of the '762 patent by Fairplay's Fleet Model Golf Cars.

14. On January 23, 2006, a Preliminary Injunction Order was issued against Fairplay, and Fairplay was "enjoined and restrained within the United States of America from making, assembling, importing, marketing, selling, or leasing the two seater versions of [Fairplay's] Fleet and Legacy Model Golf Cars, or any equivalent golf car." A true and correct copy of the Preliminary Injunction Order is attached to this Complaint as Exhibit D.

15. Fairplay did not show or market its Fleet Model Golf Cars (Nos. PEC-2F4840 and PEC-4F4840), or any equivalent golf cars, at a PGA Merchandise Show in Orlando, Florida on January 26-29, 2006 ("the Orlando Trade Show"), nor at a Golf Industry Show in Atlanta, Georgia on February 9-11, 2006 ("the Atlanta Trade Show").

16. Fairplay introduced, for the first time, its 2007 ZX Cars, at both the Orlando and Atlanta Trade Shows.

17. As a result of Textron's actions and overbroad assertions of patent rights, Fairplay has an immediate, objective and reasonable apprehension that Textron will and intends to allege the infringement of the '717, '762 and/or '099 Patents through the importation, use, offer for sale and/or sale of the 2007 ZX Cars.

COUNT ONE – DECLARATION OF PATENT NONINFRINGEMENT

18. Fairplay incorporates and realleges the averments contained in Paragraphs 1 through 17, above.

19. This Count One is for a declaration that the 2007 ZX Cars imported, used, offered for sale and/or sold by Fairplay do not infringe any valid claim of the '717, '762 or '099 Patents.

20. By virtue of Textron's actions and Fairplay's reasonable apprehension that it will face an infringement suit, there is a substantial and continuing justiciable controversy between Fairplay and Textron as to Textron's right to threaten or maintain suit for infringement of the '717, '762 and/or '099 Patents by Fairplay's importation, use, sale and/or offer for sale of its 2007 ZX Cars.

21. Further, Fairplay has a reasonable belief of suit imminently being brought against it by Textron for infringement of the '717, '762 and/or '099 Patents by Fairplay's manufacture, use, sale and/or offer for sale of its 2007 ZX Cars.

22. Fairplay does not infringe the Claims of the '717, '762 and '099 Patents by its 2007 ZX Cars, and Fairplay's conduct does not violate 35 U.S.C. § 271.

23. Accordingly, Fairplay is entitled to a declaratory judgment of non-infringement of the '717, '762 and '099 Patents by its 2007 ZX Cars.

PRAYER FOR RELIEF

WHEREFORE, Fairplay respectfully requests the following relief:

A. Judgment that Textron is without right or authority to threaten or maintain suit against Fairplay or its customers for the alleged infringement of the '717, '762 and '099 Patents by the 2007 ZX Cars; and that the '717, '762 and '099 patents are not infringed by Fairplay because of the importation, use, offering for sale and/or sale of the 2007 ZX Cars;

B. A preliminary and permanent injunction enjoining Textron, its officers, agents, servants, employees and attorneys, and those persons in active concert or participation with Textron who receive actual notice thereof, from initiating infringement litigation or threatening Fairplay, or any of its customers, dealers, agents, servants or employees, or any prospective or present sellers, dealers or users of Fairplay's 2007 ZX Cars, with infringement litigation, or charging any of them, either verbally or in writing, with infringement of the '717, '762 and/or '099 Patents, because of the importation, use, sale or offering of sale of Fairplay's 2007 ZX Cars;

C. Award Fairplay its costs and reasonable attorney's fees; and

D. Grant Fairplay such further relief as this Court deems just and proper.

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Dated: April 18, 2006
728486 / 29987

By: /s/ David E. Moore
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David E. Moore (#3983)
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Attorneys for Plaintiff Fairplay Electric Cars, LLC

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

CERTIFICATE OF SERVICE

I, David E. Moore, hereby certify that on April 18, 2006, the attached document was hand delivered on the following person and was electronically filed with the Clerk of the Court using CM/ECF which will send notification of such filing(s) to the following and the document is available for viewing and downloading from CM/ECF.

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Peter B. Ladig
THE BAYARD FIRM
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Suite 900
Wilmington, Delaware 19801

I hereby certify that on April 18, 2006, I have Electronically Mailed the attached document to the following non-registered participants:

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Exhibit A



US00D345717S

United States Patent [19]

Molzon et al.

[11] Patent Number: **Des. 345,717**[45] Date of Patent: **** Apr. 5, 1994**[54] **GOLF CAR**[75] Inventors: William R. Molzon, Clarkson, Mich.;
James M. Criscuolo, Martinez, Ga.[73] Assignee: **Textron Inc., Providence, R.I.**[*] Term: **14 Years**[21] Appl. No.: **886,444**[22] Filed: **May 20, 1992**[52] U.S. Cl. **D12/16**[58] Field of Search **296/186; 280/DIG. 5;**
D12/16[56] **References Cited****U.S. PATENT DOCUMENTS**

D. 255,558 6/1980 Ekuun **D12/16**
 D. 320,580 10/1991 Kim **D12/16**
 D. 326,831 6/1992 Lanus et al. **D12/16**
 4,037,614 7/1977 Hines et al. **135/5 A**
 4,098,536 7/1978 Mills **296/78 R**
 4,334,692 6/1982 Lynch **280/79.1 A**
 4,533,013 8/1985 Hightower **180/210**

4,650,238 3/1987 Healey **296/37.7**
 4,772,064 9/1988 Moore **296/102**
 4,773,695 9/1988 Jones et al. **296/77.1**
 5,094,500 3/1992 Maypole et al. **296/102**

OTHER PUBLICATIONS1990 E-Z-Go Textron Product Catalog, pp. 1, 6, 9, 14,
22, 23, 24.

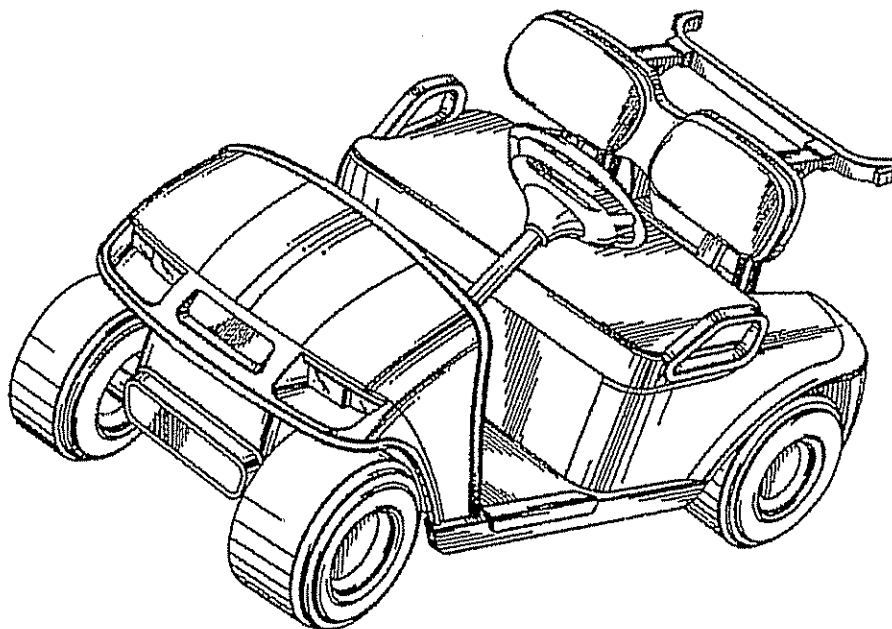
Primary Examiner—Wallace R. Burke

Assistant Examiner—M. Brown

Attorney, Agent, or Firm—Perman & Green

[57] **CLAIM**The ornamental design for a golf car, as shown and
described.**DESCRIPTION**

FIG. 1 is a perspective view of a golf car showing our
new design;
 FIG. 2 is a top plan view thereof;
 FIG. 3 is a side elevational view thereof, the opposite
side being a mirror image;
 FIG. 4 is a front elevational view thereof; and,
 FIG. 5 is a rear elevational view thereof.



U.S. Patent

Apr. 5, 1994

Sheet 1 of 4

Des. 345,717

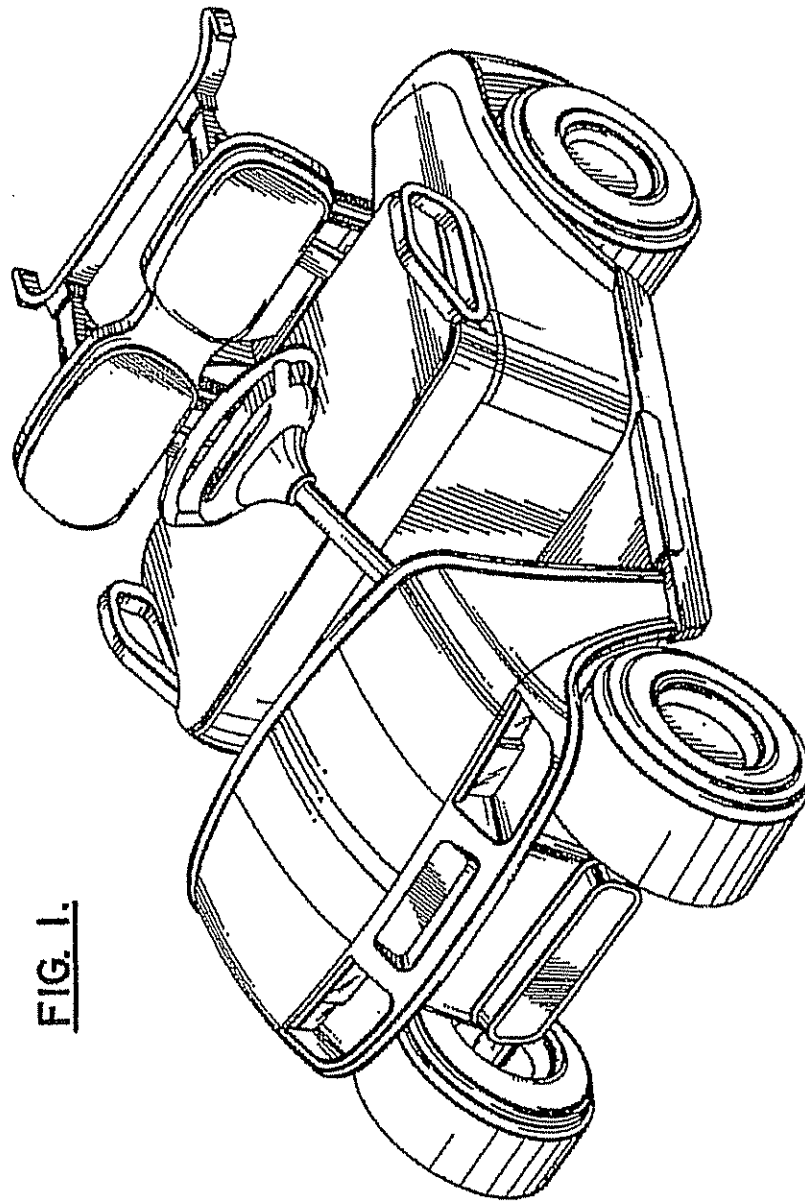


FIG. 1.

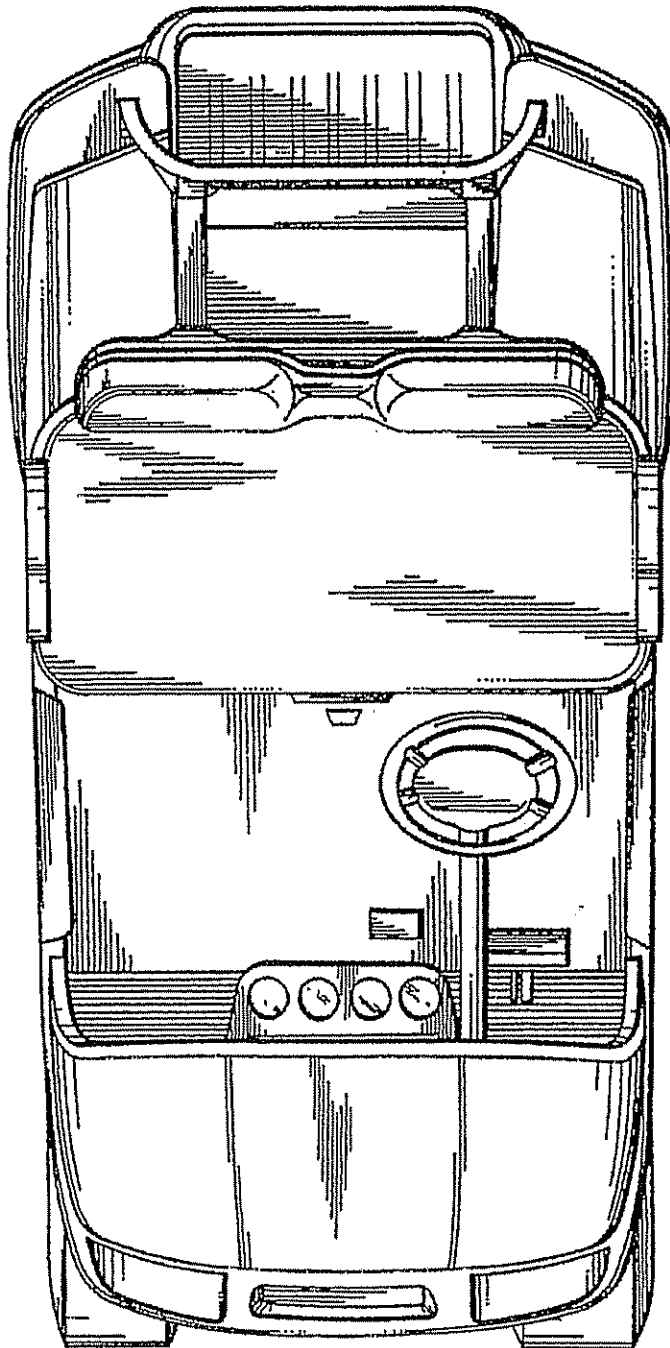
U.S. Patent

Apr. 5, 1994

Sheet 2 of 4

Des. 345,717

FIG. 2.



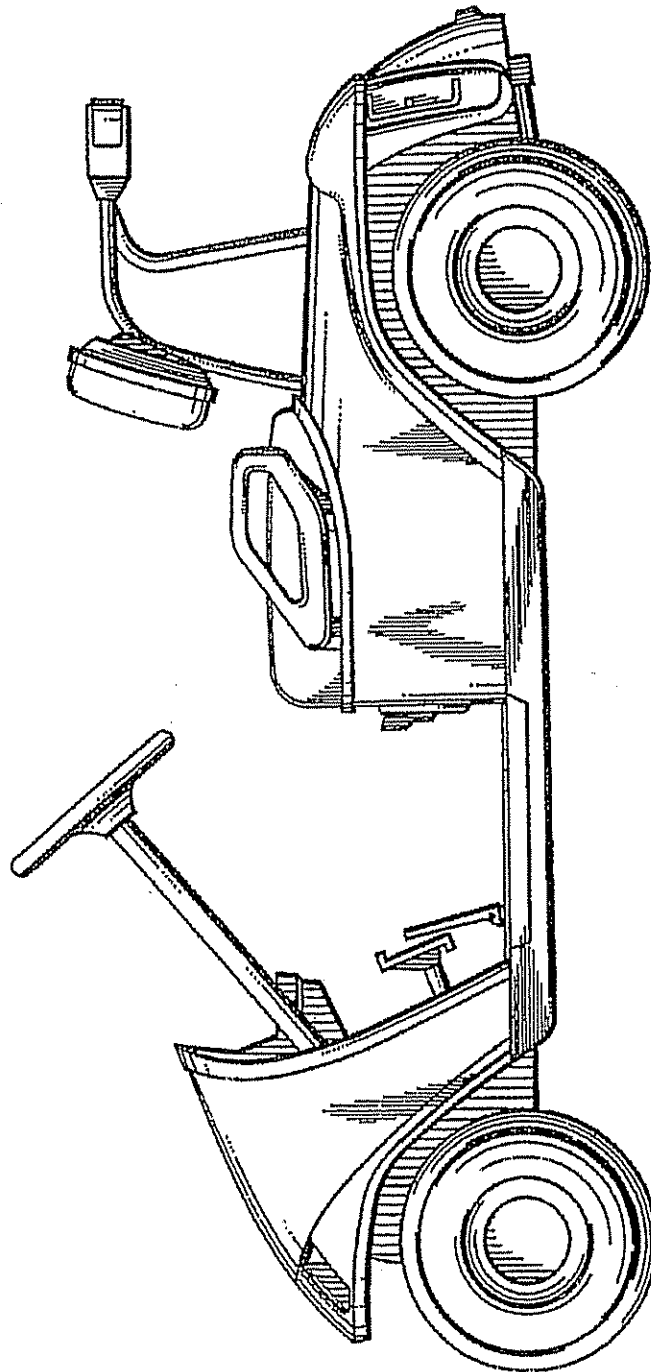
U.S. Patent

Apr. 5, 1994

Sheet 3 of 4

Des. 345,717

FIG. 3.



U.S. Patent

Apr. 5, 1994

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Des. 345,717

FIG. 4.

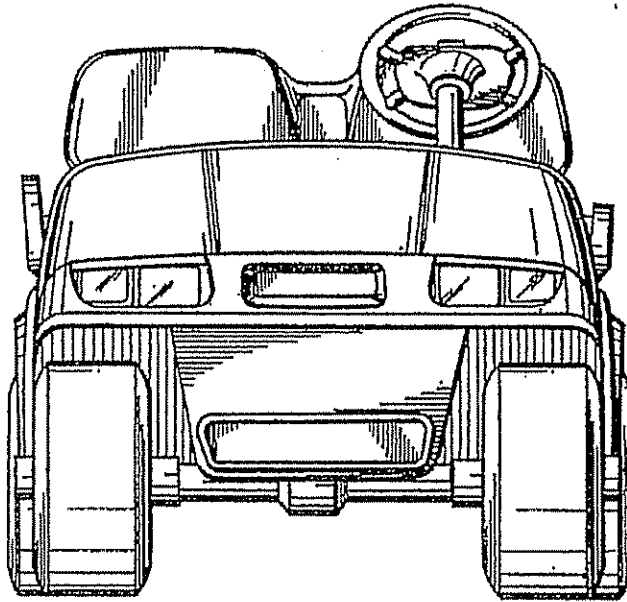


FIG. 5.

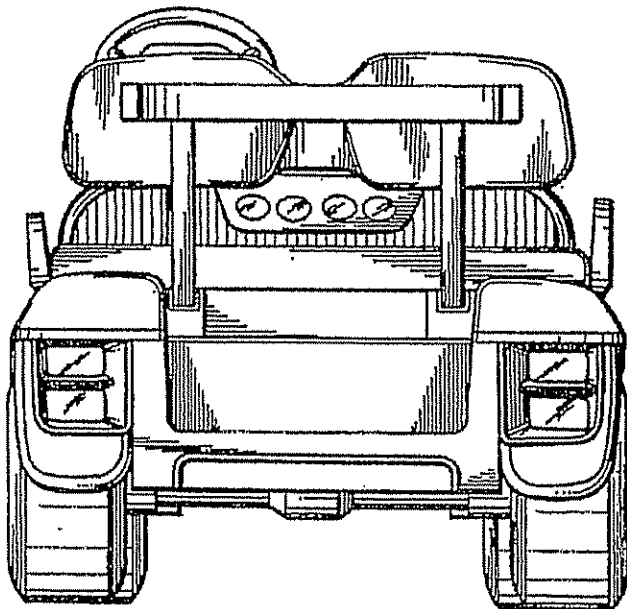


Exhibit B



US00D369762S

United States Patent [19]

Molzon et al.

[11] Patent Number: **Des. 369,762**[45] Date of Patent: **May 14, 1996**

[54] GOLF CAR

[75] Inventors: William R. Molzon, Clarkson, Mich.;
James M. Criscuolo, Martinez, Ga.

[73] Assignee: Textron Inc., Providence, R.I.

[**] Term: 14 Years

[21] Appl. No.: 29,859

[22] Filed: Oct. 18, 1994

Related U.S. Application Data

[63] Continuation-in-part of Ser. No. 17,534, Jan. 14, 1994,
which is a continuation-in-part of Ser. No. 886,444, May 20,
1992, Pat. No. Des. 345,717, and Ser. No. 886,445, May 20,
1992, Pat. No. Des. 345,718

[52] U.S. Cl. D12/16

[58] Field of Search D12/16; 280/DIG. 5;
296/186

[56] References Cited

U.S. PATENT DOCUMENTS

D. 255,558	6/1980	Ekman	D12/16
D. 320,580	10/1991	Kim	D12/16
D. 326,831	6/1992	Lamius et al.	D12/16
D. 345,717	4/1994	Molzon et al.	D12/16
D. 345,718	4/1994	Molzon et al.	D12/16

4,037,614	7/1977	Hines et al.	135/5 A
4,098,536	7/1978	Mills	296/78.1
4,334,692	6/1982	Lynch	280/79.1 A
4,533,013	8/1985	Hightower	180/210
4,650,238	3/1987	Henley	296/37.7
4,772,064	9/1988	Moore	296/102
4,773,695	9/1988	Jones et al.	296/77.1
5,094,500	3/1992	Maypolc et al.	296/102

OTHER PUBLICATIONS

1990 B-Z-GO Textron Product Catalog, pp. 1, 6, 9, 14, 22,
23, 24Primary Examiner—Melody N. Brown
Attorney, Agent, or Firm—Perman & Green

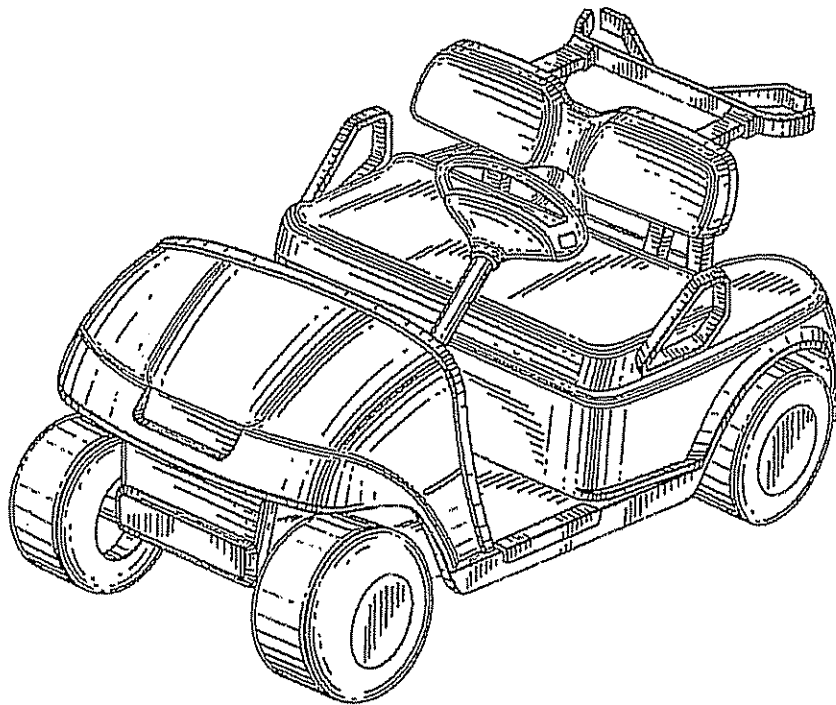
[57] CLAIM

The ornamental design for a golf car, as shown and
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DESCRIPTION

FIG. 1 is a perspective view of a golf car showing our new
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FIG. 5 is a rear elevational view thereof.

1 Claim, 4 Drawing Sheets

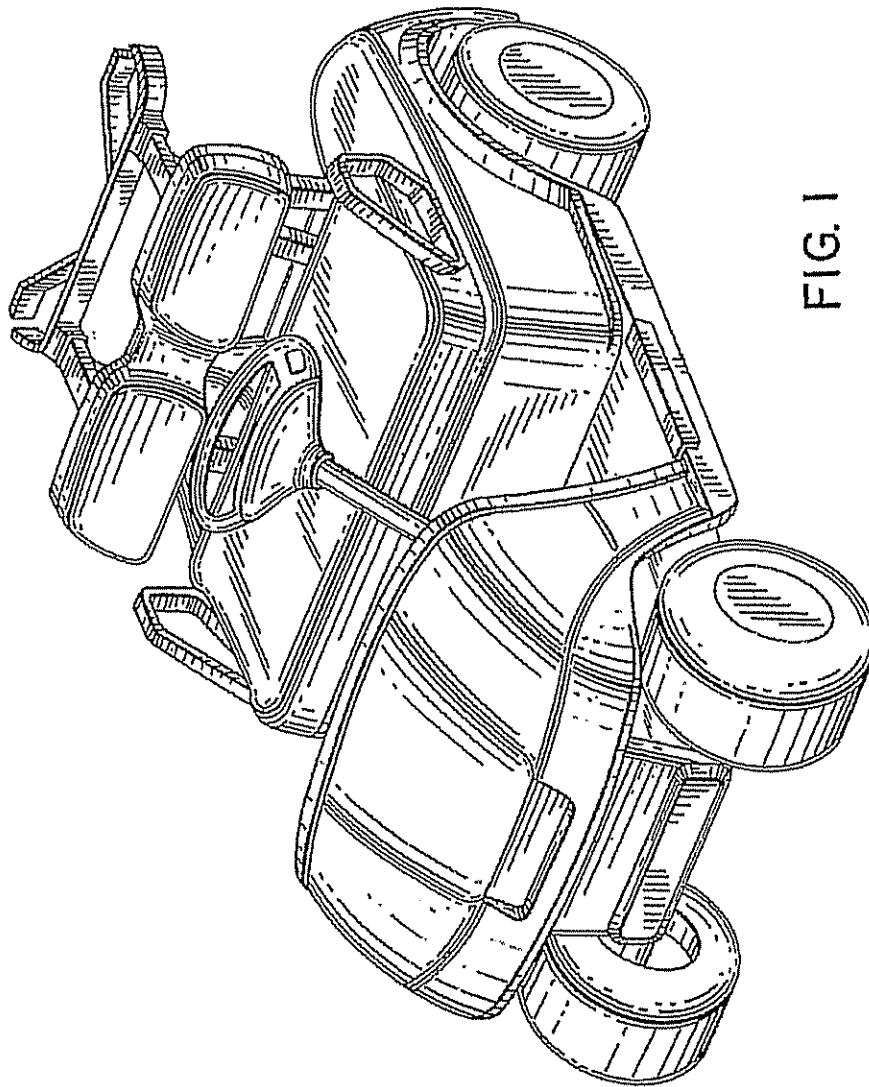


U.S. Patent

May 14, 1996

Sheet 1 of 4

Des. 369,762



U.S. Patent

May 14, 1996

Sheet 2 of 4

Des. 369,762

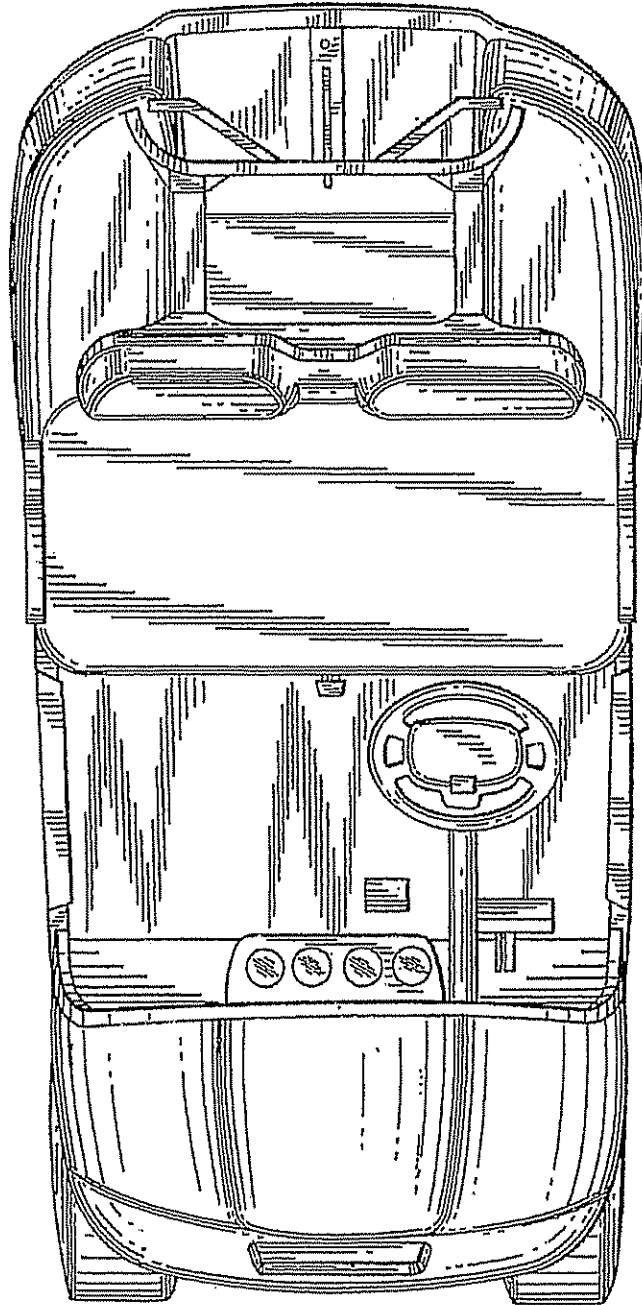


FIG. 2

U.S. Patent

May 14, 1996

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Des. 369,762

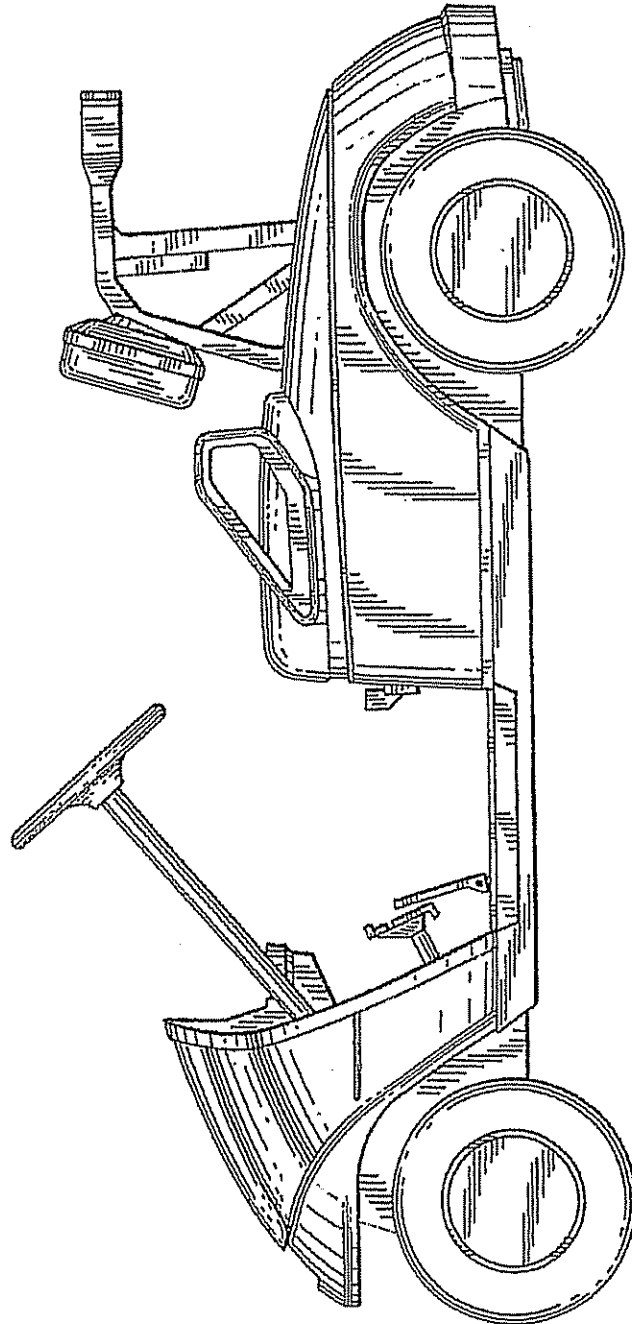


FIG. 3

U.S. Patent

May 14, 1996

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Des. 369,762

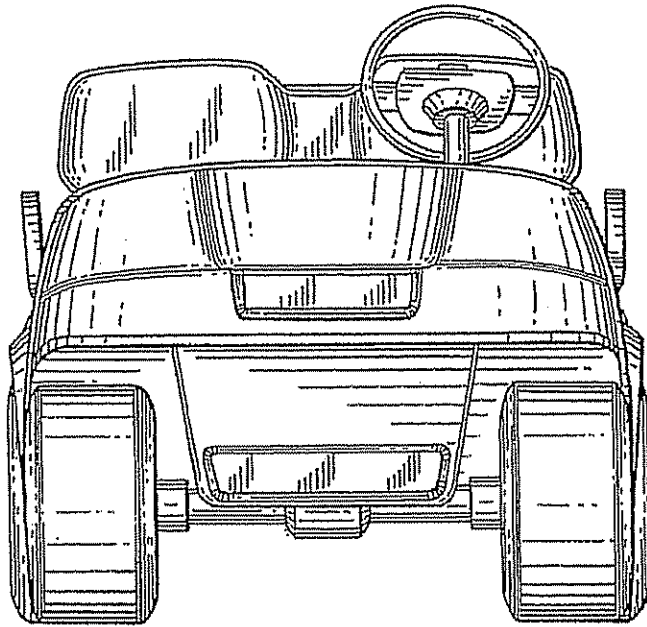


FIG. 4

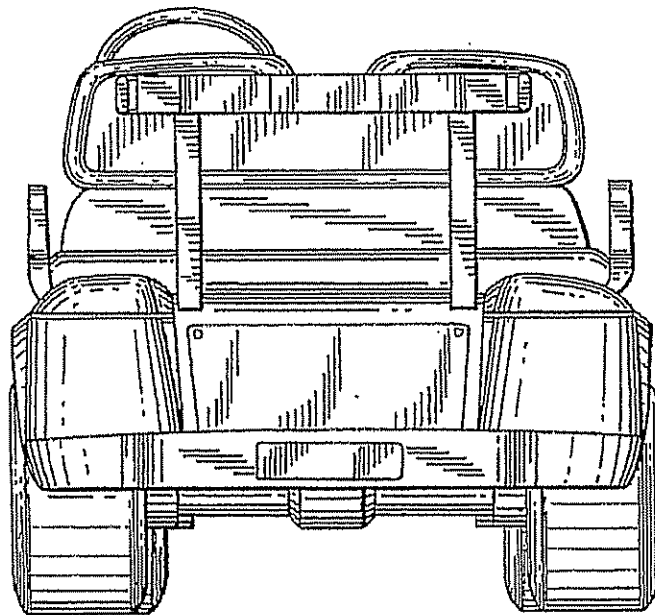


FIG. 5

Exhibit C



US00D373099S

United States Patent [19]

Molzon et al.

[11] Patent Number: Des. 373,099

[45] Date of Patent: Aug. 27, 1996

[54] GOLF CAR

[75] Inventors: William R. Molzon, Clarkston, Mich.;
James M. Criscuolo, Martinez, Ga.

[73] Assignee: Textron Inc., Providence, R.I.

[*] Notice: The portion of the term of this patent
subsequent to Apr. 5, 2008, has been
disclaimed.

[**] Term: 14 Years

[21] Appl. No.: 17,534

[22] Filed: Jan. 14, 1994

Related U.S. Application Data

[63] Continuation-in-part of Ser. No. 886,444, May 20, 1992,
Pat. No. Des. 345,717, and a continuation-in-part of Ser. No.
886,445, May 20, 1992, Pat. No. Des. 345,718

[52] U.S. Cl. D12/16

[58] Field of Search D12/16; 296/186,
296/377; 280/DIG. 5

[56] References Cited

U.S. PATENT DOCUMENTS

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D. 320,580	10/1991	Kim	D12/16
D. 326,831	6/1992	Larus et al.	D12/16
D. 345,717	4/1994	Molzon et al.	D12/16
D. 345,718	4/1994	Molzon et al.	D12/16

4,037,614	7/1977	Hines et al.	135/5 A
4,098,536	7/1978	Mills	296/78.1
4,334,692	6/1982	Lynch	280/79.1
4,533,012	8/1985	Hightower	180/210
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4,773,695	9/1988	Jones et al.	296/77.1
5,094,500	3/1992	Maypole et al.	296/102

OTHER PUBLICATIONS

1990 E-Z-GO Textron Product Catalog, pp. 1,6,9,14,22,23,
24.

Primary Examiner—A. Hugo Word

Assistant Examiner—M. Brown

Attorney, Agent, or Firm—Perman & Green

[57] CLAIM

The ornamental design for a golf car, as shown and
described.

DESCRIPTION

FIG. 1 is a perspective view of a golf car showing our new
design;

FIG. 2 is a top plan view thereof;

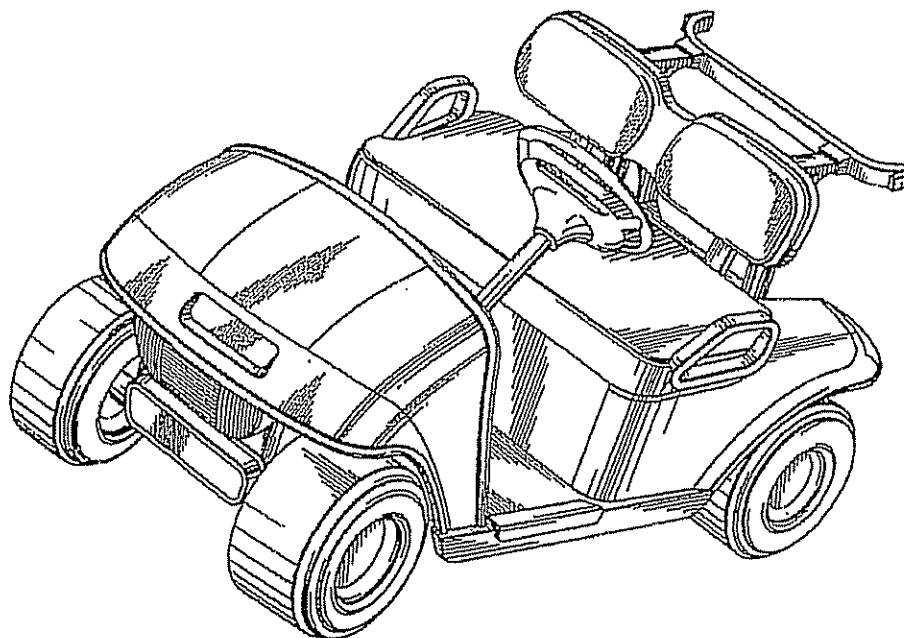
FIG. 3 is a left side elevational view thereof;

FIG. 4 is a front elevational view thereof;

FIG. 5 is a rear elevational view thereof; and,

FIG. 6 is a right side elevational view thereof

1 Claim, 5 Drawing Sheets



U.S. Patent

Aug. 27, 1996

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Des. 373,099

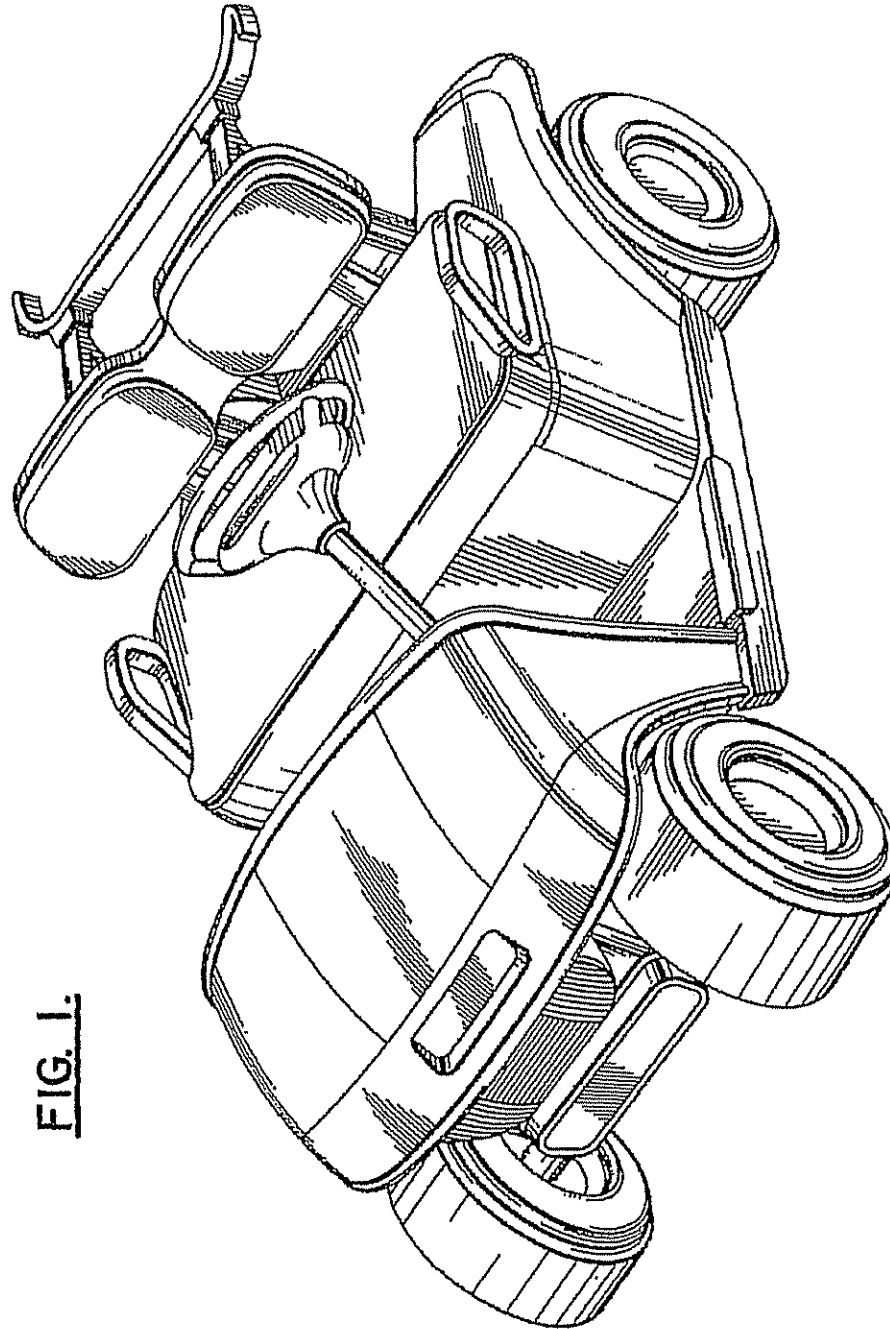


FIG. 1.

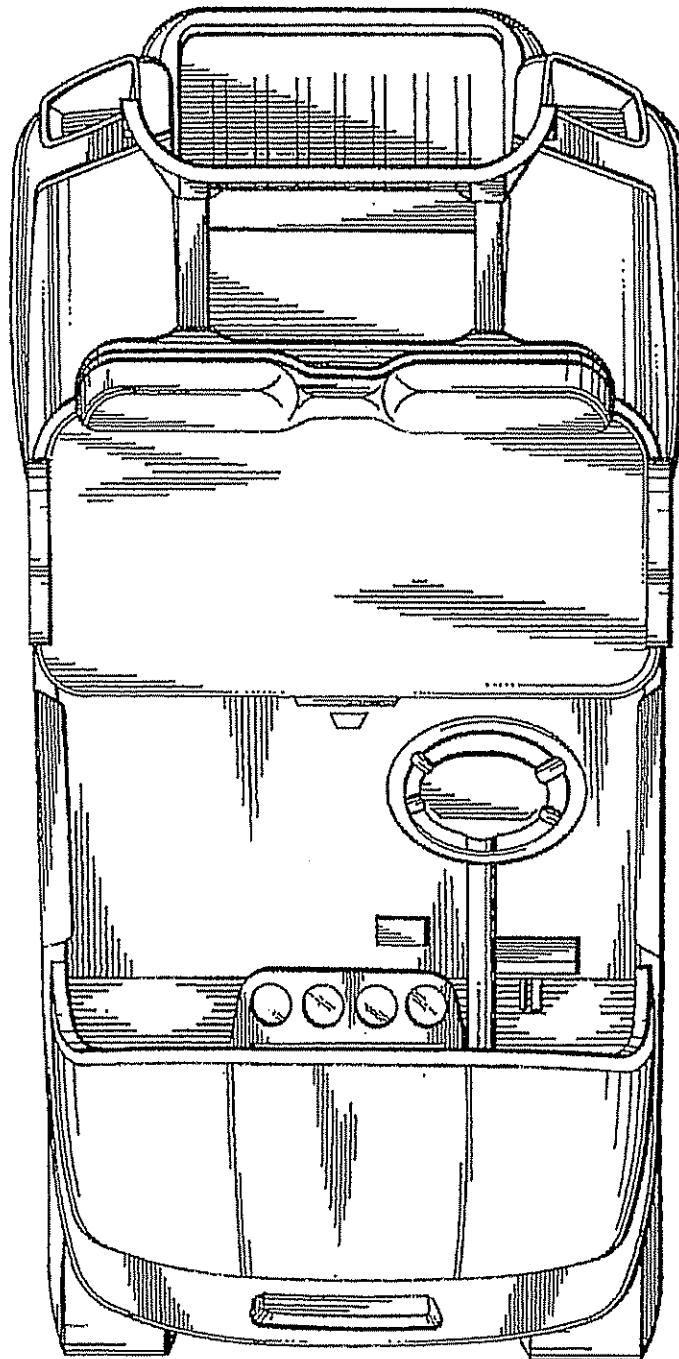
U.S. Patent

Aug. 27, 1996

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Des. 373,099

FIG. 2.



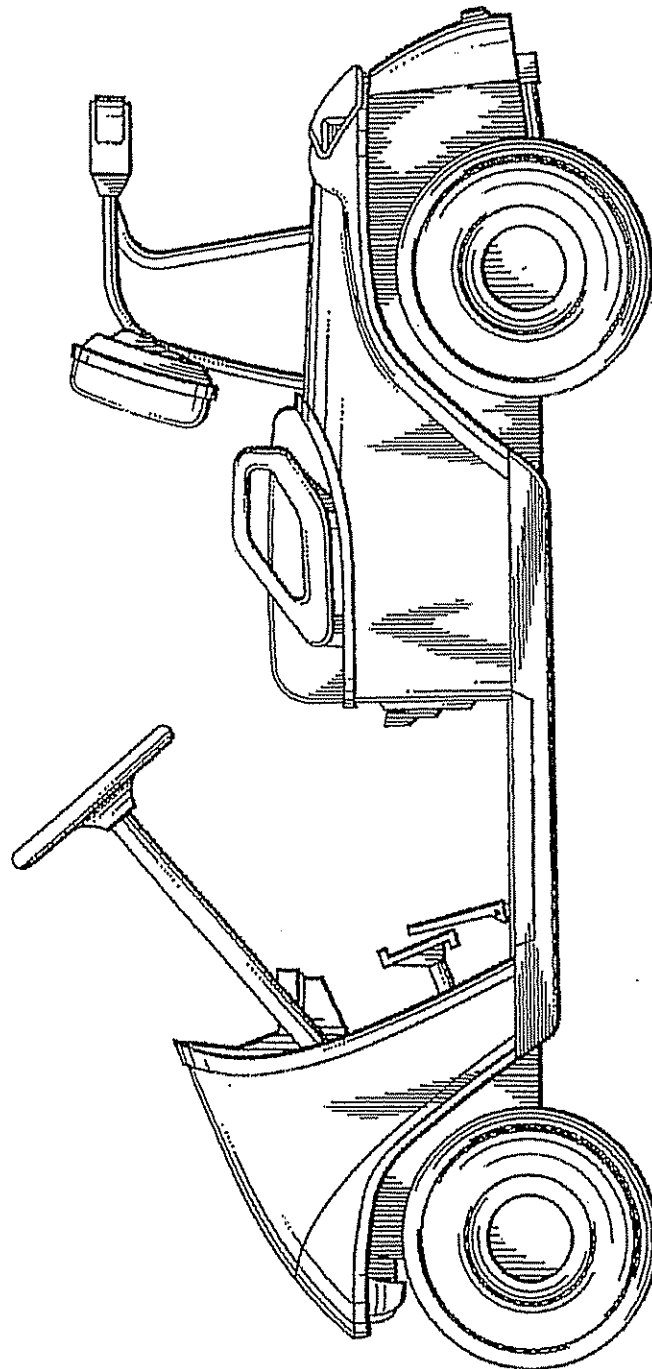
U.S. Patent

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Des. 373,099

FIG. 3.



U.S. Patent

Aug. 27, 1996

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Des. 373,099

FIG. 4.

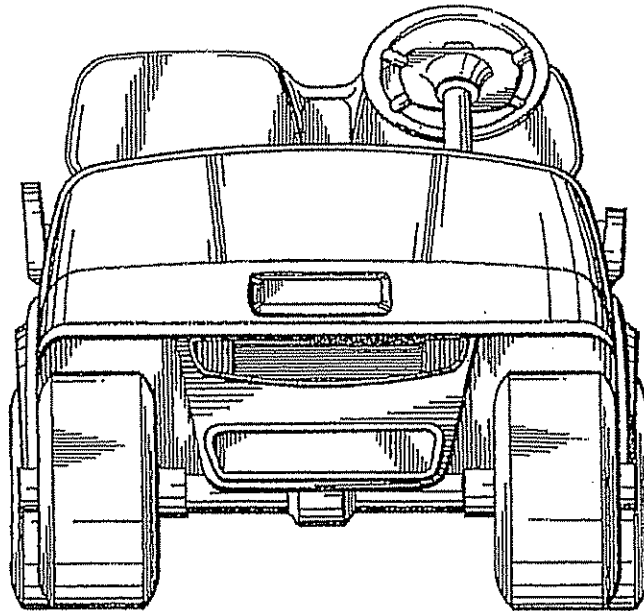
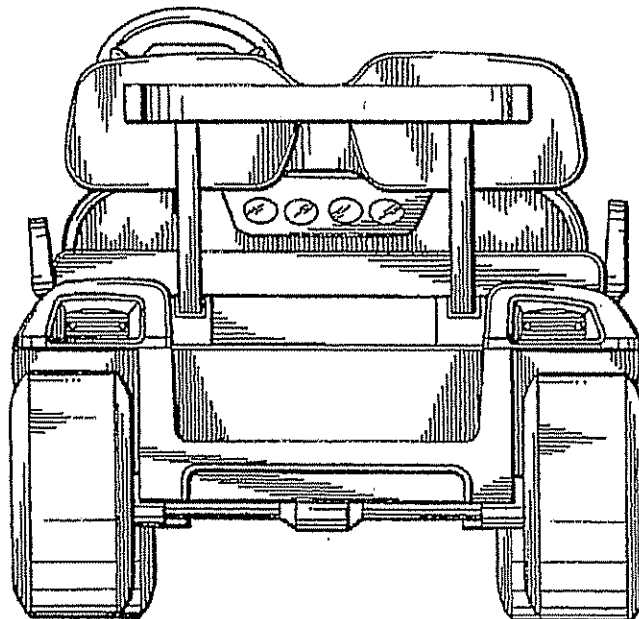


FIG. 5.



U.S. Patent

Aug. 27, 1996

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Des. 373,099

FIG. 6.

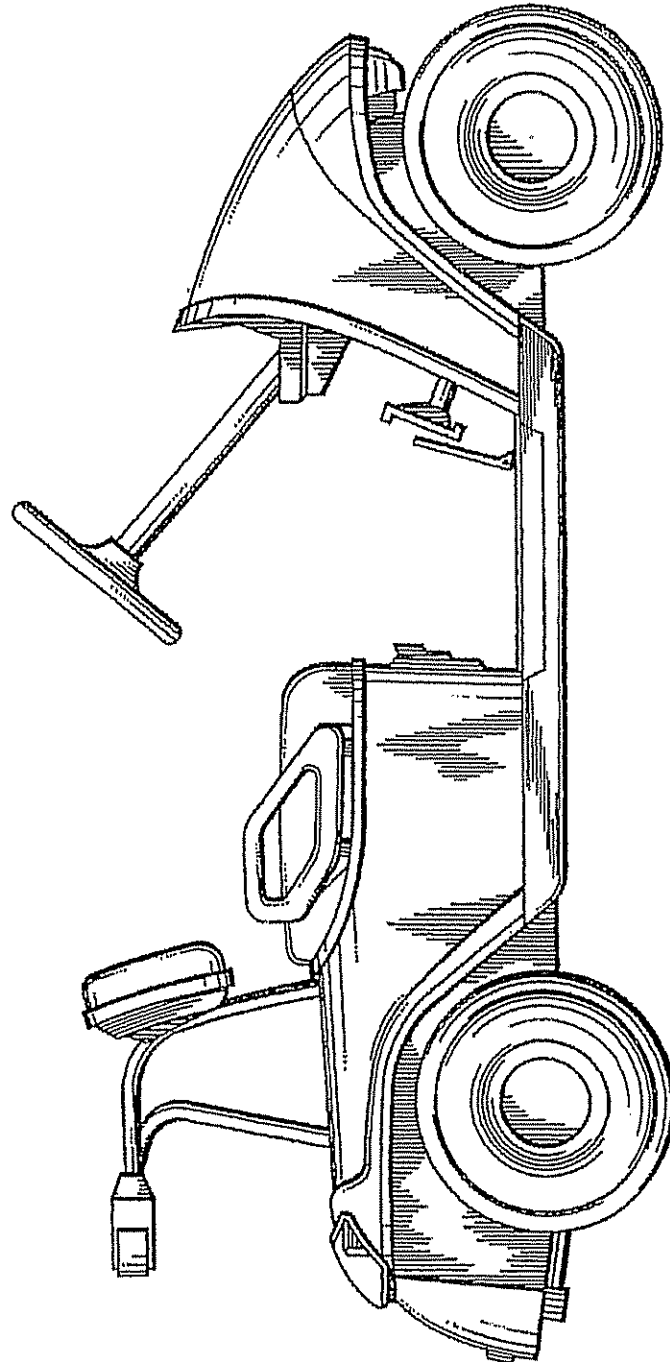


Exhibit D

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T-301 P.002/003 F-973

FILED
U.S. DISTRICT COURT
AUGUSTA DIV.

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

2006 JAN 24 PM 2:50

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SO. DIST. OF GA.

TEXTRON INNOVATIONS, INC.,
and E-Z GO (a division of
TEXTRON, INC.),

Plaintiffs,

v.

FAIRPLAY ELECTRIC CARS, LLC,

Defendant.

CV 106-009

ORDER

Presently before the Court in the captioned matter is Plaintiffs' motion for a preliminary injunction to enjoin Defendant from infringing Plaintiffs' United States Design Patent No. 369,762. (Doc. No. 3.) Upon consideration of the evidence and the parties' written and oral arguments, the Court orally expressed findings of fact and conclusions of law into the record at the conclusion of the hearing held yesterday on this matter.

Based upon those findings of fact and conclusions of law, IT IS HEREBY ORDERED that Defendant Fairplay Electric Cars, LLC, is enjoined and restrained within the United States of

Pursuant to Federal Rule of Civil Procedure 65(d), this injunction is binding upon Defendant's officers, agents, servants, employees, and attorneys, and any person in active concert or participation with them who receive actual notice

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2/5

Jan-24-06 03:48pm From:USDC Aug

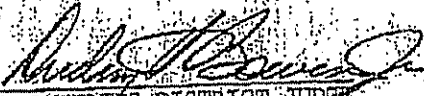
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T-301 P 001/003 F-573

America from making, assembling, importing, marketing, selling, or leasing the two-seater versions of Defendant's Fleet and Legacy Model Golf Cars, or any equivalent golf car.

This Order shall remain in effect until February 6, 2006; however, the expiration date of this Order will be extended if Defendant does not file its opposition to this injunction and arrange for another hearing by the close of business on February 6, 2006.

ORDER ENTERED at Augusta, Georgia, this 24th day of January, 2006.


UNITED STATES DISTRICT JUDGE

of this Order, by personal service or otherwise.